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DISSOLUTION OF VOWS AND THE PROBLEM OF ANTI-SOCIAL OATHS IN THE GOSPELS AND CONTEMPORARY JEWISH LITERATURE.¹

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IN Mark 7 9-11 we read Jesus' words to the Pharisees: "And he said unto them, Full well do ye reject the commandment of God, that ye may keep your tradition. For Moses said, Honor thy father and thy mother; and he that speaketh evil of father or mother, let him die the death; but ye say, If a man shall say to his father or his mother, that wherewith thou mightest have been profited by me is Corban, that is to say, given to God; ye no longer suffer him to do aught for his father or mother; making void the word of God by your tradition, which ye have delivered; and many such like ye do."

Jesus' fundamental criticism of the Pharisees is that by means of their legal traditions they nullify the law.² As to the question of how the Pharisees make void the word of God, we may suppose that it was done either by permitting one to take a vow which involved the violation of the law, or by saying that any vow whatsoever, once taken, must be fulfilled, thus allowing a man to evade the law by considering a vow binding which necessitates the violation of the law. The phrase in Mark *οὐκέτι ἀφίετε αὐτόν* and *οὐ μὴ τιμήσει* of Matthew suggests that the Pharisees insisted upon the fulfillment of the vow, and Jesus demanded that the vow be broken. It must be admitted, however, that we cannot draw definite conclusions from the New Testament passages as to what exactly Jesus' criticism has been,

¹ I wish to express my indebtedness to my teachers, Prof. M. Burrows and Prof. H. A. Wolfson, for many valuable suggestions.

² See Strack-Billerbeck, *Kommentare zum N. T. aus Talmud and Midrash*, I, on Matt. 15 5.

but from Mishnaic literature we learn that the Pharisees not only disapproved of such vows, but also gave the man who made such a vow an opportunity to retract it. Chwolsohn³ and Wünsche⁴ are of the opinion that the Pharisaic view expressed in the Mishnah is a direct contradiction of the view attributed to the Pharisees by Jesus. Klausner also claims that the Pharisaic view held in the Mishnah is quite contrary to the charge brought by Jesus, and he tries to solve the difficulty as follows: "There are three possible explanations of the difference: the rule in the time of Jesus may have been otherwise, or Jesus may have been bringing an unjustifiable charge against the Pharisees, or else the authors of the Gospels had heard something about the rules concerning vows among the contemporary Tannaim, and confused permission with prohibition."⁵ The implication of Klausner's explanation is that the Mishnaic and New Testament records cannot be reconciled.⁶

³ Chwolsohn, *Das Letzte Passamahal*, 95

⁴ Wünsche, *Neue Beiträge*, 131.

⁵ Klausner, *Jesus of Nazareth*, 306.

⁶ Many theories have been formulated in order to reconcile the contradicting sources. Büchler claims that the term *φαρισαῖοι* here is not used in its literal sense. Jesus criticized the priests not the Pharisees, and the term Corban does not mean prohibiting the profit like Corban, but giving away to the Temple the money with which one supports his parents (*Die Priester und Cultus im letzten Zeitalter des Jerusalemischen Tempels*, 93). Kaufmann says that Jesus criticized the Pharisees for their opinion that a person might make a vow to violate any ritual law, but could not make an oath for such a purpose (*Golah we-nakar*, 351–352). This interpretation is hardly acceptable, for we find no reference in the Mishnah that a person can make a vow to violate any moral obligation. Furthermore, according to the Sinaitic Syriac in Matthew, Jesus speaks here about oaths. J. H. Hart confused the issue altogether ("Corban," *Jewish Quarterly Review*, 1907, 165–220). J. Mann claims that anti-social oaths and vows were not considered binding in biblical time and Jesus protested that the Pharisees considered such vows binding. ("Oaths and Vows in the Synoptic Gospels," *American Journal of Theology*, 1917, 260–279). The story of the tribes of Israel who took an oath prohibiting the marriage of their daughters to the Benjamites shows that in Old Testament times anti-social oaths were considered valid. Of all the men who have done work in the field Prof. Mann is the first who brought it to our attention that the disagreement between Jesus and the Pharisees had been whether or not such oaths are binding.

In order to understand Jesus' words we must first see the difference between the earlier and later Halakah with regard to vows and oaths. By 'earlier Halakah' I do not refer to biblical customs, but to post-biblical law in the pre-Pharisaic period. In the Mishnah we read the following statement: "The rules concerning dissolving of vows fly about in the air and there is nothing upon which they can stand."⁷ From this Mishnah we learn that according to Pharisaic teaching vows can be dissolved under certain circumstances, but, as is explicitly stated in many other Mishnahs, only a judge can dissolve vows, and even he can do it only by suggesting reasons which, if known at the time, would have prevented the person from making the vow. The person who has taken the vow can under no circumstances dissolve it himself. The law of dissolving vows by the judge, however, is not a very old Halakah. If it were, the Mishnah would not say, "there is nothing upon which it can stand," since an ancient law in Tannaitic literature has as much authority as a biblical law. The *Fragment of a Zadokite Work*, which contains more or less Sadducean ideas, says definitely that if a man makes an oath, he must keep it even at the price of death,⁸ which shows that this sect did not acknowledge any way to dissolve an oath.

What the attitude of the earlier Halakah was towards dissolving vows, we have no evidence of from Rabbinic literature. We may consider, however, Josephus' and Philo's view. In connection with the oath which the Israelites made not to give their daughters in marriage, Josephus says: "And whereas they had before the war taken an oath that no one should give his daughter as a wife to a Benjamite, some advised them to have no regard for what they had done, because the oaths were not taken advisedly and judiciously, but in passion, and thought they would not offend God if they were able to save a whole tribe from perishing, and perjury was not dreadful and injurious when it was done out of necessity but only when it was done of wicked intention."⁹ This reference of Josephus', that there was

⁷ *Mishnah Hagigah*, 1, 8.

⁸ Schechter, *Jewish Sectaries* I, 15, 5.

⁹ *Antiquities* V, ii, 12.

a disagreement in the Senate as to whether the violation of an oath taken not with sober reason but in a passion, for an anti-social purpose, would be an offense to God and perjury, is not mentioned in the Bible. Josephus, undoubtedly, has here in mind a disagreement in the Sanhedrin of his time as to whether a person may violate such oaths. Josephus, however, does not say specifically whom he has in mind when he speaks about this disagreement. All that we can learn from Josephus is that in Palestine itself not all scholars were of the same opinion with regard to anti-social oaths.

According to Philo, if a person takes an oath he must fulfill it under any circumstances, and if he violates the oath he may be punished by death. An exception to this rule is made however, in the case of an anti-social oath, which is not binding. A person may violate such an oath but must ask God for forgiveness.¹⁰ If Philo and the "some who advised them" to which Josephus refers, represent an earlier Palestinian Halakah, then the Pharisaic reform was stricter in some cases and milder in other cases than the earlier Halakah. Anti-social oaths or vows in the earlier Halakah were not considered binding, whereas the Pharisees said that even such oaths could not be automatically dissolved. According to the Pharisaic view, if a person vowed that his friend should not profit by him, he would have to fulfill the vow, unless he came to the judge and proved that if he had known the result of it, he would never have made it. Here the Pharisaic law is the stricter of the two, but with regard to general vows the Pharisaic Halakah is milder than the earlier law. According to the earlier Halakah, vows which are not anti-social cannot be dissolved at all, whereas the Pharisees give the judge the right to dissolve them if good reasons are given by the man who took the vow.

It seems to me, however, that though we have seen a great difference of opinion between Philo and the Pharisees with regard to vows and oaths, it is in the writing of Philo only that we can trace the origin of the Mishnaic law that vows, under

¹⁰ *Spec. Leg.*, II, 7-14; see also Heinemann, *Philons griechische und jüdische Bildung*, 88 ff; Goodenough, *Jewish Jurisprudence in Egypt*, 42.

certain circumstances, can be dissolved by a judge. In the *Hypothetica* Philo again makes reference to the law that vows must be fulfilled, but he adds a bit of Jewish law which has no origin in Mishnaic literature. He writes: "Release from a promise or vow (καὶ ἔκλυσις δὲ ἐπιφημισθέντων) can only be in the most perfect way when the high priest discharges him from it (μεγίστη τοῦ ἱερέως ἀποφήσαντος); for he is the person to receive it in due subordination to God. And the next way is that which consists in propitiating the mercy of God in behalf of those who are the more immediate owners of the thing vowed, so that he may not accept of what is thus dedicated."¹¹ Philo's view is that in case one dedicates something to his friend, the latter may disregard the vow, if he feels that the owner needs the thing vowed. This is merely an extension of his principle that anti-social vows and oaths are not binding, and this principle Philo applies not only to one who makes the vow, but also to the one who profits by it. Thus when the one who is about to benefit by the vow propitiates the mercy of God for the dissolution of the vow, the one who made the vow is not obliged to give the thing to the one he mentioned in the vow. The other point of Philo that the high priest can dissolve vows, has no origin in the Mishnaic literature, but it seems that Philo preserved for us a pre-Mishnaic tradition. The Pharisees who always endeavored to take away the judicial rights from the priesthood made the innovation that a judge or court could dissolve vows instead of the high priest.

It seems to me beyond doubt that the statement in Philo that the high priest could dissolve vows has historical value; only in this light can we understand one of the earliest disagreements between the Pharisees and the priesthood, one which forced Alexander Jannaeus to abandon the Pharisaic party and side with the Sadducees.

In the Jerusalem Talmud an interesting incident is told which was the first cause of the conflict between Alexander Jannaeus and Simon ben Shetah, the corner-stone of Pharisaism. The Talmud relates that three hundred Nazarites came to Jerusalem to offer their sacrifices at the time when the vow of their term

¹¹ Eusebius, *Praep. Evang.*, VIII, vii, p. 180 (Lipsiae ed.).

of Nazarite was about to expire. Unfortunately, however, they were poor and could not afford the expenses of buying the sacrifices which were required in order to fulfill the final rites of a Nazarite. Through the influence of Simon ben Shetah, Alexander Jannaeus paid for the sacrifices of a hundred and fifty men while Simon ben Shetah himself dissolved the vows of the other hundred and fifty, so that they were no longer obliged to bring offerings, for their vow of Nazarite became automatically annulled. When Alexander Jannaeus was informed of the latter's action he became so embittered that Simon ben Shetah disappeared for a long time fearing the anger of the King.¹² The historicity of the nucleus of this story was never doubted.¹³ Leszynsky says "in dieser Anekdote spiegelt sich ein Stuck dieser Kämpfe der Parteien lebendig wider."¹⁴ The question naturally arises, why did Alexander Jannaeus become so angered against Simon ben Shetah? The Talmud says that Alexander Jannaeus was embittered against him because the latter promised to pay a half of the expense and instead of paying he dissolved the vow of the Nazarites. The common answer to the question among modern scholars is that Alexander Jannaeus was opposed to the Pharisaic innovation by which vows could be dissolved.¹⁵ It is highly improbable, however, that Alexander Jannaeus' opposition to the Pharisaic innovation should have caused a complete breach in the relationship between him and Simon ben Shetah, which finally led to the former's siding with the Sadducees. Simon ben Shetah's action must have been a personal insult to Alexander Jannaeus.

It seems to me, however, that the story related in the Talmud was misunderstood. Alexander Jannaeus was not only the political ruler of the Jewish Kingdom, but also held the office of high priest. The Pharisees never objected to his holding the office of a King, but they always looked with envy on his claim to be the head of the priesthood. Thus the privilege of dissolving vows

¹² *Jerusalem Talmud Nazir*, 54 b; *Berokat*, 11b.

¹³ See *Dorot Harishonim*, I, pp. 496-500.

¹⁴ *Die Sadduzaer*, 48.

¹⁵ *Ibid.*, 49; J. Mann, "Oaths and Vows in the Synoptic Gospels," *American Journal of Theology*, 1917, 272.

traditionally belonged only to Alexander Jannaeus who was the high priest. Consequently, when Simon ben Shetah dissolved the vow of the Nazarites it was a direct insult to Alexander Jannaeus and an insinuation that the latter did not deserve to be the head of the priesthood. It is no wonder that the Midrash relates that Simon ben Shetah was afraid that Alexander Jannaeus would kill him for what he had done.¹⁶ The result of this incident was that the Pharisees denied the high priest the privilege of dissolving vows, and made the innovation that vows and oaths can be dissolved by a judge only.

It would thus appear that anti-social oaths and vows in Old Testament times could not be dissolved under any circumstances, and, therefore, that the tribes of Israel considered their oaths not to give their daughters to the Benjamites indissoluble. In later times, as Philo and Josephus tell us, there was a certain party in Palestine which considered such oaths not binding. The high priest was the only one who could dissolve vows and oaths. The Pharisees made an innovation that vows and oaths could be dissolved by a judge if good reasons were given by the man who took the vow, and also that anti-social oaths were binding unless dissolved by a judge. It is interesting to note that with regard to anti-social vows we find a Tannaitic statement in the Jerusalem Talmud which corresponds to the view held by Philo, but the Rabbis changed the text for they could hardly have accepted such an Halakah. The Talmud states that some scholars interpreted the biblical phrase in Numbers 30 32 **על נפשו לאסור איסור** that one can bind only himself, but he cannot make such a vow on others, which means that anti-social oaths are not binding (**על נפשו לא על אחרים**).¹⁷ It may be that a small minority even among the Pharisees considered anti-social vows not binding.

As to the question of what the opinion of the Sadducees was toward anti-social oaths we have no direct evidence either from Tannaitic literature or from Josephus. If the *Fragment of a Zadokite Work* represents Sadducean principles, we may be

¹⁶ *Genesis Rabah*, 91, 3.

¹⁷ *Jerusalem Talmud Nedarim*, 37b; see also *Sifre on Numbers*, 153 (Num. 30 2).

assured that the Sadducees protested against such vows and oaths but still considered them binding, for the author of the Zadokite Work says that whoever makes his possession devoted on somebody else walks in the footsteps of the Gentiles, but he does not say that a person may violate such an oath.¹⁸

In the same light we may understand Jesus' words to the Pharisees. As we have mentioned before, there are two objections to the theory that Jesus criticized the Pharisees because they nullified the law by permitting a vow which involves a violation of the law, but Jesus also is of the opinion that once such a vow has been taken it must be fulfilled. First the phrases in Mark and Matthew, "Ye no longer suffer him to do aught for his father or mother," and "He shall not honor his father," suggest that Jesus criticized the Pharisees for not allowing one to violate such vows; and, second, we know from Tannaitic literature that the Pharisees opposed such vows. Consequently, we must favor the second theory that Jesus criticized the Pharisees for considering such vows binding. Jesus, like Philo and the group of the Senate which Josephus mentions, is in favor of the Halakah, which maintains that anti-social oaths or vows are not binding, and he criticizes the Pharisees for making void the work of God by the tradition which they have delivered, because they have arrogated to themselves the authority over anti-social vows and prohibited the violation of them, except with their permission.

If our interpretation of Jesus' statement is true, then in no other place have we such a striking agreement between Philo and Jesus as in the law of vows and oaths. Both of them emphasize the serious offense of violating oaths; both of them prohibit taking oaths; both of them are of the opinion that oaths by heaven and earth are binding; but while they both preach that oaths must be fulfilled they are both opposed to fulfilling anti-social oaths.

¹⁸ See L. Ginzberg, *Eine Unbekannte jüdische Sekte*, 54-55. I follow Prof. Ginzberg's reading of the text instead of Schechter's.